**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE JURISDICTION**

**APPEAL FROM ORDER ST.NO.11774 OF 2007.**

Smt.Gulabi Giriya Shetty and others. ... Appellants.
Versus.
Smt.Pravina Chandrakant Tolia
@ Shah and another. ... Respondents.

Shri S.N.Vaishnawa i/by M/s.N.N.Vaishnawa & Co.for the Appellants.

Shri G.S.Godbole i/by Mrs.Neela A.Dholakia for the Respondents.

**CORAM : ABHAY S.OKA, J.**

**DATED : 7th June, 2007.**

**P.C.:**

1. By this Appeal from order the original Defendants have taken an exception to the order dated 31st May 2007 passed by the trial Court. The operative part of the impugned order reads thus:

> ". Notice of Motion is made r/o. Ad-interim relief in terms of prayer clause (a) and (d) of the Notice of Motion till next date.
>
> . At this stage Ld.Advocate Vaishnava has prayed for stay of the ad-interim order. However, order has been passed after hearing both the sides. Hence request of defendants is not considered.

. The learned Advocate Vaishnava for the defendant has pressed for issuance of Commission for local inspection of the suit premises. In support of his contention he relied upon ratio laid down in AIR 2003 Himachal Pradesh page 87, which says that court can exercise power suo moto to appoint Court Commissioner. I have perused the said citation, particularly para No.13. However, though the defendant claims to be in possession but [prima facie no such documents are on record. On the other hand the Plaintiff relied upon registered documents. So I do not feel it necessary to exercise power suo moto as there is no uncertain/ confusing situation requiring clarification regarding the possession of the suit premises. Considering the comparative submissions of both the sides, I do not feel that defendant is also in possession of the suit premises. Hence I need not exercise the power suo motu. Adjourned to 17th June, 2007."

On a plain reading of the order, ad-interim relief has been granted only till the next date. It is not in dispute that the next date fixed by the trial Court is 17th June 2007 which is a Sunday. There is obviously an

accidental error in the order. By order dated 1st June 2007, this Court granted ad-interim relief in terms of prayer clause (a) of the Civil Application.

2. As the next date of the Notice of Motion in wrongly mentioned as 17th June 2007, the Motion will have to be placed on board of the trial Court on 18th June 2007.

3. Ad-interim relief granted by the trial Court has been specifically made operative till next date. The order does not make it clear whether prayer for ad-interim relief is finally decided by the learned trial Judge or whether he wants to hear the parties further for considering the prayer for ad-interim relief.

4. Considering the fact that the Notice of Motion will come up before the trial Court on 18th June 2007, till that date both the parties will have to maintain status-quo as obtaining today in respect of the suit premises. The Appeal need not be kept pending as the trial Court will consider the Motion on 18th June 2007. Hence the Appeal is disposed of by the following order:

(i) Notice of Motion No.1857 of 2007 in S.C.Suit No.2005 of 2007 (St.No.2025 of

2007) shall be placed before the learned trial Judge on 18th June 2007.

(ii) Till 18th June 2007, the parties will maintain status-quo as obtaining today in respect of the suit premises.

(iii) All contentions of the parties in the pending Notice of Motion are expressly kept open.

(iv) Appeal is disposed of accordingly with no order as to costs.

**Judge.**